U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: AUG 15 2013 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Elizabeth McCormack

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center (the director). The appeal was dismissed by the Administrative Appeals Office (AAO). The petitioner filed a motion to reopen and reconsider the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be granted, and the appeal will be dismissed on its merits. The petition remains denied.

The petitioner indicated that it is a medical imaging and radiology business. It seeks to employ the beneficiary permanently in the United States as a marketing and public relations coordinator. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which has been approved by the United States Department of Labor (DOL). Upon reviewing the petition, the director determined that the petitioner had failed to establish that the beneficiary is qualified to perform the duties of the proffered position with a minimum of a bachelor's degree in public relations, English or journalism and 60 months (five years) of qualifying employment experience. The director denied the petition accordingly.

On motion, the petitioner states new facts and submits copies of the beneficiary's statements, academic records and certificates, and a copy of the rules and syllabi from the schools she attended; therefore, the motion will be granted.

As set forth in the director's May 7, 2012 denial, the issue in this case is whether the petitioner has established that the beneficiary possessed all the education, training, and experience requirements as of the priority date as required by the labor certification.

In pertinent part, section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N Dec.158 (Acting Reg'l Comm'r 1977). The priority date of the petition is June 30, 2011, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).[1] The Immigrant Petition for Alien Worker (Form I-140) was filed on February 8, 2012.

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[1] If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

To determine whether a beneficiary is eligible for an employment based immigrant visa, United States Citizenship and Immigration Services (USCIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm'r 1986). *See also*, *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

A review of the AAO's decision reveals that the AAO accurately set forth a legitimate basis for the denial. The AAO determined that the petitioner had failed to establish that the beneficiary possessed the minimum level of education as stated on the labor certification and as required by the advanced degree professional visa category. Specifically, the AAO determined that the two evaluations submitted by the petitioner were not persuasive in establishing that the beneficiary's education from South Africa is equivalent to a U.S. bachelor's degree, in that neither of the evaluations concluded that the beneficiary's education in South Africa was the equivalent to a single source U.S. bachelor's degree. The AAO also determined that based upon the opinion of AACRAO EDGE, the beneficiary's education more likely than not "represents attainment of a level of education comparable to three years of university study in the United States." The AAO thereafter dismissed the appeal.

On motion the issue is whether the petitioner has established that the beneficiary possesses all the education, training, and experience requirements indicated on the labor certification, with a minimum of a bachelor's degree in public relations, English, or journalism plus five years of qualifying employment experience.

As noted above, the DOL certified the ETA Form 9089 in this matter. The DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified, and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the alien labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in an alien labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the alien labor certification must involve reading and applying *the plain language* of the alien labor certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the alien labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the alien labor certification.

According to the plain terms of the labor certification in the instant matter, the applicant must have at a minimum a bachelor's degree in public relations, or in the alternative, a bachelor's degree in English or journalism, and five years of experience in the job offered. The petitioner also indicated that five years of work experience as a public relations officer or writer as an alternate occupation would be acceptable, and that it would accept a foreign educational equivalent.

The petitioner submitted a copy of the beneficiary's Bachelor of Arts degree issued to her by the [redacted] in South Africa on April 17, 1997. The petitioner also submitted a copy of the beneficiary's transcripts from the [redacted] The petitioner submitted on motion a letter dated September 10, 2007 from the faculty assistant administrator of the faculty of humanities at the [redacted], who stated that the beneficiary was enrolled at the university in the program of Bachelor of Arts from February 1994 to December 1996. The declarant further stated that the Bachelor of Arts program is a three-year undergraduate qualification, that the beneficiary completed all requirements for qualification, and that the beneficiary was awarded a Bachelor of Arts degree at the graduation ceremony held on April 17, 1997. It is noted that neither the declarant's statements nor the beneficiary's bachelor's degree specifies that the degree was in public relations, English or journalism, as is required by the labor certification.

On motion, the beneficiary states that the law relating to the acceptance of a beneficiary's degree has been inappropriately and inconsistently applied in that USCIS has established a lengthy and established practice of accepting three-year bachelor's degrees from South Africa and other countries as being equivalent to a U.S. Bachelor's degrees; not only in the context of immigrant labor certification petitions, but also in the context of H-1B petitions. The beneficiary further states that hundreds of examples can be provided to show where USCIS accepted, for the identical purposes as those in the instant matter, three-year degrees from the [redacted] However, the petitioner has not submitted any evidence to substantiate these statements. The beneficiary refers to decisions issued by the AAO concerning a three-year degree being considered the equivalent to a U.S bachelor's degree, but does not provide

any published citations. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

The beneficiary asserts that the regulations allow for an applicant to have the equivalent of a U.S. bachelor's degree, and that the regulations also allow a beneficiary to combine progressive work experience in the field with university study, and to use work experience only to meet the equivalency requirement. The beneficiary further asserts that the regulations specifically state that for H-1B purposes, three years of work experience in the field will be considered the equivalent of one year of U.S. university study; and that her attached curriculum vitae demonstrates that she has a total of seven years of related work experience in a related field. The beneficiary asserts that based on the fact that three years of progressive work experience in the field will be considered the equivalent of one year of U.S. university study, her seven years of progressive work experience should be considered the equivalent of two years of U.S. university study. Therefore, the beneficiary concludes that the evidence demonstrates that her South African degree combined with her work experience is the equivalent of a five-year U.S. degree.

Although the beneficiary equated three years of experience for one year of education in the instant matter, that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(*5*). Furthermore, the beneficiary fails to cite to any specific regulation to substantiate her claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The beneficiary requests on motion that all of her educational credentials be reviewed in reevaluating her qualifications. She asserts that she received an Associates Teachers Diploma in Speech and Drama from a major at second year level in psychology from the in 1998; a major at third year level in psychology from the in 1999; and a Certificate of distinction in journalism from in 2002. The beneficiary submitted as evidence copies of her Bachelor of Arts degree and transcripts from the her Certificate in journalism from her school transcripts from a syllabus for performing, communication skills, teaching, education studies, and directing from from 2009; and rules and syllabus for the faculty of humanities from the South Africa, for 2013. Contrary to the beneficiary's assertions, the evidence must show that the beneficiary has obtained a single U.S. bachelor's degree or foreign equivalent, which the petitioner has failed to establish.

When the beneficiary relies on a bachelor's degree (and five years of progressive experience) for qualification as an advanced degree professional, the degree must be a single U.S. bachelor's (or foreign equivalent) degree. The Joint Explanatory Statement of the Committee of Conference,

published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the legacy INS responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990) and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold at least a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[2] In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" of a United States baccalaureate degree. *See* 8 C.F.R. § 204.5(k)(2).

The beneficiary's degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the

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[2] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of H-1B nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

beneficiary has a United States baccalaureate degree or a foreign equivalent degree." For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." The AAO cannot conclude that the evidence required to demonstrate that a beneficiary is an advanced degree professional is any less than the evidence required to show that the beneficiary is a professional. To do so, would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30706 (July 5, 1991).[3]

In addition, a three-year bachelor's degree will generally not be considered to be the "foreign equivalent" of a United States baccalaureate degree. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977).[4] *See Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008) (for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree); *see also Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich., August 20, 2010) (the beneficiary's three-year bachelor's degree was not the foreign equivalent of a U.S. bachelor's degree).

On motion, the beneficiary requests that the evaluations be used by USCIS to determine whether her three-year Bachelor of Arts degree from the South Africa plus her other qualifications are equivalent to a four-year U.S. bachelor's degree. As is noted in the AAO's initial decision, the record contains evaluations of the beneficiary's educational credentials by for Washington Evaluation Service dated March 16, 2009 and June 2, 2012. The March 16, 2009 evaluation described the beneficiary's education as being the equivalent of a U.S. bachelor's degree in English and Law, and that her education combined with 11 years of professional work experience was equivalent to a second major in marketing and public relations. The June 16, 2009 evaluation described the beneficiary's education as being the equivalent of a U.S. bachelor's degree in English and Law.[5]

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[3] *Compare* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, diploma, certificate or similar award from a college, university, school or other institution of learning relating to the area of exceptional ability").

[4] In *Matter of Shah* the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Id.* at 245.

[5] USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the

As is noted in the AAO's decision dated April 23, 2013, the AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." *See* http://www.aacrao.org/About-AACRAO.aspx. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." *See* http://edge.aacrao.org/info.php. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.[6] If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[7]

According to EDGE, the beneficiary's three-year Bachelor of Arts degree is comparable to three years of university study in the United States.

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petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

[6] *See An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx.

[7] In *Confluence International, Inc. v. Holder,* 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the beneficiary's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the beneficiary's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification required a degree and did not allow for the combination of education and experience.

Therefore, based upon a review of the evidence and assertions made on motion and the conclusions of EDGE, the evidence in the record is not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. bachelor's degree.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date, which as noted above, is June 30, 2011. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act.Reg.Comm.1977).

Accordingly, it has not been established that the beneficiary has the requisite education as required by the ETA Form 9089 or that she is qualified to perform the duties of the proffered position. 8 C.F.R § 204.5(g)(1).

Beyond the decision of the director, the petitioner has also failed to establish its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2).

In determining the petitioner's ability to pay the proffered wage, USCIS first examines whether the petitioner has paid the beneficiary the full proffered wage each year from the priority date. If the petitioner has not paid the beneficiary the full proffered wage each year, USCIS will next examine whether the petitioner had sufficient net income or net current assets to pay the difference between the wage paid, if any, and the proffered wage.[8] If the petitioner's net income or net current assets is not sufficient to demonstrate the petitioner's ability to pay the proffered wage, USCIS may also consider the overall magnitude of the petitioner's business activities. *See Matter of Sonegawa,* 12 I&N Dec. 612 (Reg. Comm'r 1967).

In the instant case, the proffered wage is $81,037.00 and the priority date is June 30, 2011. The petitioner submitted a copy of the beneficiary's earnings statements for the pay periods June 20, 2011 to July 3, 2011 and July 4, 2011 through the pay period from October 24, 2011 to November 6, 2011. The petitioner submitted a CPA letter dated January 25, 2012. The representative stated in the letter that because the priority date for the instant petition was established as of the priority date, June 30, 2011, the petitioner has only to establish its ability to pay the proffered wage from July 1, 2011 through December 31, 2011. The declarant further stated that based upon the beneficiary's earning statements, as of November 6, 2011, the petitioner had already paid her a gross salary of $46,153.89, which is well in excess of the 50% of $81,037.00 that is required. Counsel requests that USCIS prorate the proffered wage for the portion of the year that occurred after the priority date. USCIS will not, however, consider 12 months of income towards an ability to pay a lesser

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[8] *See River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986); *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983); and *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd,* No. 10-1517 (6th Cir. filed Nov. 10, 2011).

period of the proffered wage any more than we would consider 24 months of income towards paying the annual proffered wage. While USCIS will prorate the proffered wage if the record contains evidence of net income or payment of the beneficiary's wages specifically covering the portion of the year that occurred after the priority date (and only that period), such as monthly income statements or pay stubs, the petitioner has not submitted evidence to establish that the beneficiary's year-to-date wages paid through November 6, 2011 were paid solely for work performed since the priority date. In particular, the evidence shows that the beneficiary had been paid gross wages of $26,923.12 as of July 3, 2011, which amount would have been paid prior to the June 30, 2011 priority date. The record does not show that the beneficiary was paid the prorated wage from July 1, 2011 to December 31, 2011, as the record does not contain pay stubs from November 6, 2011 through December 31, 2011.

Accordingly, the petitioner has failed to establish its continuing ability to pay the proffered wage to the beneficiary since the priority date.

For these reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not met that burden.

ORDER: The AAO's prior decision, dated April 23, 2013, is affirmed. The petition remains denied.